



## PAPER B

Purpose: For Decision

# Committee report

Committee	<b>REGULATORY COMMITTEE</b>
Date	<b>FRIDAY, 8 MARCH 2013</b>
Title	<b>TO DETERMINE AN APPLICATION FOR REVIEW OF THE PREMISES LICENCE UNDER SECTION 51 OF THE LICENSING ACT 2003 FOR HOUSE OF LEGENDS, 21-22 HIGH STREET, NEWPORT, ISLE OF WIGHT, PO30 1SS</b>
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### BACKGROUND

1. The provision for reviewing a premises licence exists to protect the community where problems associated with crime and disorder, public safety, public nuisance or the protection of children from harm are occurring at premises where a premises licence has been granted under the Licensing Act 2003.
2. At any stage following the grant of a premises licence, a responsible authority or other person may apply to the licensing authority for a review of the licence on the grounds that one or more of the four licensing objectives is not being upheld.
3. A premises licence for House of Legends was granted in September 2005 during the conversion period to the Licensing Act 2003. The current premises licence (Appendix A) is held by MG Heating (IW) Limited. The Designated Premises Supervisor (DPS) is Mrs Alexandra Goldstone.
4. The Police have applied for a review of the premises licence for the House of Legends (Appendix B) under Section 51 of the Licensing Act 2003 in relation to the licensing objectives –
  - The Prevention of Crime and Disorder
  - Public Safety
  - The Prevention of Public Nuisance
5. The application requests that the Committee consider removing the DPS, reducing the hours for licensable activities and attach conditions to limit the permitted noise levels from entertainment and to restrict the capacity of the premises. The application has come about due to observations by the police that have caused them concern. Namely that in the evenings at busier times the premises is congested and this makes it difficult for staff to monitor customers, in the police opinion music has been excessively loud on occasion and various conditions of the licence have potentially been breached.
6. Additional information from Police has been provided to support their application; this information can be found at Appendix C.

## CONSULTATION

7. The Licensing Act 2003 prescribes a twenty-eight day consultation period, commencing the day after the review application has been correctly served. The licensing authority is required to advertise the application at or on the premises and at the Council offices.
8. This review application was received on 16 January 2013. The application was advertised at the premises, at the Council offices at Jubilee Stores and on the Council's website. The consultation period ended on the 13 February 2013.
9. The outcome of the consultation in respect of this review application is as follows:

### Responsible Authorities

- |                             |                                  |
|-----------------------------|----------------------------------|
| • Children's Services       | No Representation made           |
| • Trading Standards Service | No Representation made           |
| • Planning Services         | No Representation made           |
| • NHS                       | No Representation made           |
| • Fire and Rescue Service   | Representation made (Appendix D) |
| • Environmental Health      | Representation made (Appendix D) |
| • Licensing Authority       | Representation made (Appendix D) |

10. The Fire and Rescue Service have confirmed that the calculation for safe maximum numbers has been requested and that the risk assessment shows the maximum number for downstairs as 110, which could be increased if certain work is carried out. They are not aware of any work having been carried out and therefore would support the proposal by Police to restrict the capacity.
11. Environmental Health have submitted representations regarding this application outlining the history of the premises. No noise complaints have been received other than a complaint from the police in April 2011 as they could hear the music emanating from these premises in their car and a complaint that was made to the Licensing Section by Police in November 2012 alleging that music was excessively loud and that doors and windows were not kept closed as required by a condition of the licence.
12. Environmental Health have requested revision of condition 26 that is currently attached to the licence and is satisfied that the conditions attached should ensure noise nuisance is prevented, however, have provided the wording of a condition requiring a sound limiter to be installed, should the Committee decide that this is required.
13. The Licensing Authority has provided details of the history of these premises and confirmed that they believe there is no evidence to suggest a reduction in the hours for licensable activities is appropriate and that they do not believe removal of the DPS will address the concerns but have recommended a number of modifications to the current licence conditions to ensure the objectives are promoted.

### Other Persons

14. One valid representation has been received from other persons (Appendix E) relating to the licensing objective, prevention of public nuisance. The local resident supports the Police's view that the music emanating from these premises is excessively loud.

### Licence Holder

15. Representations have been received from the licence holder outlining the nature of the premises and further representations were received to confirm their position with regard to the suggestions made by Responsible Authorities. These can be found at Appendix F.

### FINANCIAL/BUDGET IMPLICATIONS

16. Broadly, Council expenditure on licensing matters, and specifically those administered and enforced through Planning and Regulatory Services, balances income generated from fees.

### LEGAL IMPLICATIONS

17. The 28 day consultation period ended on 13 February 2013. Schedule 1 of the Licensing Act (Hearings) Regulations 2005 states that the application must be determined within 20 working days of the end of the consultation period.

### National Guidance

18. The following sections from the national guidance issued under section 182 of the Licensing Act 2003 are considered relevant to this application:

#### **Each application on its own merits**

1.17 Each application must be considered on its own merits and in accordance with the licensing authority's statement of licensing policy; for example, if the application falls within the scope of a cumulative impact policy. Conditions attached to licences and certificates must be tailored to the individual type, location and characteristics of the premises and events concerned. This is essential to avoid the imposition of disproportionate and overly burdensome conditions on premises where there is no need for such conditions. Standardised conditions should be avoided and indeed may be unlawful where they cannot be shown to be appropriate for the promotion of the licensing objectives in an individual case.

#### **Safe capacities**

2.13 "Safe capacities" should only be imposed where appropriate for the promotion of public safety or the prevention of disorder on the relevant premises. For example, if a capacity has been imposed through other legislation, it would be inappropriate to reproduce it in a premises licence. Indeed, it would also be wrong to lay down conditions which conflict with other legal requirements. However, if no safe capacity has been imposed through other legislation, a responsible authority may consider it appropriate for a new capacity to be attached to the premises which would apply at any material time when the licensable activities are taking place and make representations to that effect. For example, in certain circumstances, capacity limits may be appropriate

in preventing disorder, as overcrowded venues can increase the risks of crowds becoming frustrated and hostile.

### **Proportionality**

10.10 The 2003 Act requires that licensing conditions should be tailored to the size, type, location and characteristics and activities taking place at the premises concerned. Conditions should be determined on a case by case basis and standardised conditions which ignore these individual aspects should be avoided. Licensing authorities and other responsible authorities should be alive to the indirect costs that can arise because of conditions. These could be a deterrent to holding events that are valuable to the community or of the funding of good and important causes. Licensing authorities should therefore ensure that any conditions they impose are only those which are appropriate for the promotion of the licensing objectives.

### **Hours of trading**

10.11 The Government acknowledges that different licensing strategies may be appropriate for the promotion of the licensing objectives in different areas. The 2003 Act gives the licensing authority power to make decisions regarding licensed opening hours as part of the implementation of its licensing policy statement and licensing authorities are best placed to make decisions about appropriate opening hours in their areas based on their local knowledge and in consultation with responsible authorities. However, licensing authorities must always consider each application and must not impose predetermined licensed opening hours, without giving individual consideration to the merits of each application.

### **Determination of applications**

9.39 The authority's determination should be evidence-based, justified as being appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve.

### **Reviews**

11.18 However, where responsible authorities such as the police or environmental health officers have already issued warnings requiring improvement – either orally or in writing – that have failed as part of their own stepped approach to address concerns, licensing authorities should not merely repeat that approach and should take this into account when considering what further action is appropriate.

11.20 In deciding which of these powers to invoke, it is expected that licensing authorities should so far as possible seek to establish the cause or causes of the concerns that the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than an appropriate and proportionate response.

11.23 Licensing authorities should also note that modifications of conditions and exclusions of licensable activities may be imposed either permanently or for a temporary period of up to three months. Temporary changes or suspension of the licence for up to three months could impact on the business holding the licence financially and would only be expected to be pursued as an appropriate means of promoting the licensing objectives. So, for instance, a licence could be suspended for a weekend as a means of deterring the holder from allowing the problems that gave rise to the review to happen again. However, it will always be important that any detrimental financial impact that may result from a licensing authority's decision is appropriate and proportionate to the promotion of the licensing objectives. But where premises are found to be trading

irresponsibly, the licensing authority should not hesitate, where appropriate to do so, to take tough action to tackle the problems at the premises and, where other measures are deemed insufficient, to revoke the licence.

## **Crime and Disorder**

2.1 Licensing authorities should look to the police as the main source of advice on crime and disorder. They should also seek to involve the local Community Safety Partnership (CSP).

9.12 In their role as a responsible authority, the police are an essential source of advice and information on the impact and potential impact of licensable activities, particularly on the crime and disorder objective. The police have a key role in managing the night-time economy and should have good working relationships with those operating in their local area.<sup>4</sup> The police should be the licensing authority's main source of advice on matters relating to the promotion of the crime and disorder licensing objective, but may also be able to make relevant representations with regards to the other licensing objectives if they have evidence to support such representations. The licensing authority should accept all reasonable and proportionate representations made by the police unless the authority has evidence that to do so would not be appropriate for the promotion of the licensing objectives. However, it remains incumbent on the police to ensure that their representations can withstand the scrutiny to which they would be subject at a hearing.

## **Public nuisance**

2.20 Conditions relating to noise nuisance will normally concern steps appropriate to control the levels of noise emanating from premises. This might be achieved by a simple measure such as ensuring that doors and windows are kept closed after a particular time, or more sophisticated measures like the installation of acoustic curtains or rubber speaker mounts. Any conditions appropriate to promote the prevention of public nuisance should be tailored to the type, nature and characteristics of the specific premises. Licensing authorities should be aware of the need to avoid inappropriate or disproportionate measures that could deter events that are valuable to the community, such as live music. Noise limiters, for example, are very expensive to purchase and install and are likely to be a considerable burden for smaller venues.

2.21 As with all conditions, those relating to noise nuisance may not be appropriate in certain circumstances where the provisions of the Environmental Protection Act 1990, the Noise Act 1996, or the Clean Neighbourhoods and Environment Act 2005 adequately protect those living in the area of the premises. But as stated earlier in this Guidance, the approach of licensing authorities and responsible authorities should be one of prevention and when their powers are engaged, licensing authorities should be aware of the fact that other legislation may not adequately cover concerns raised in relevant representations and additional conditions may be appropriate.

2.22 Where applications have given rise to representations, any appropriate conditions should normally focus on the most sensitive periods. For example, music noise from premises usually occurs from mid-evening until either late-evening or early-morning when residents in adjacent properties may be attempting to go to sleep or are sleeping. In certain circumstances, conditions relating to noise immediately surrounding the premises may also prove appropriate to address any disturbance anticipated as customers enter and leave.

## Implications under the Crime and Disorder Act 1998

19. Members are advised that without prejudice to any other obligation imposed on it, it shall be the duty of each authority to which this section applies to exercise its functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area.

## Human Rights

20. Members are advised that this application must be considered against the background of the implications of the Human Rights Act 1998.

There are three convention rights, which need to be considered in this context:

### **Article 6 - Right to a Fair Trial**

In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

It has been held that the fact that there is a right of appeal to the Magistrates' Court from any decision of the Licensing Authority is sufficient to make the Council's licensing system compliant with the convention rights.

### **Article 8 - Right to Respect for Private and Family Life**

Everyone has the right to respect for his private and family life, his home and his correspondence. In the case of article 8 there shall be no interference by a public authority with the exercise of this right except as such in accordance with the law and is necessary on a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder and crime, for the protection of health or morals or for the protection of the rights and freedoms of others.

### **Article 1 - First Protocol Protection of Property**

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. In the case of Article 1 of the first protocol it states that "no one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and the general principles of international law. The preceding provisions (of which articles 6 and 8 are but two) shall not however in any way impair the right of the state to enforce such laws as it deems necessary to control the use of the property in accordance with general interest or to secure the payment of taxes or other contributions or penalties".

21. The Licensing Authority acknowledges the right of businesses in its area to operate, but equally acknowledges the fact that this must be balanced against the rights of residents not to be disturbed by unreasonable noise and nuisance caused by licensed premises. The Sub-Committee needs to be clear as to the rights granted and the need to ensure that the reasons given for any interference are proportionate and in accordance with the Council's legitimate aim.

It is considered that the following paragraphs from the Licensing Authority's Statement of Licensing Policy 2011 – 2014 have a bearing upon the application. Members' attention in respect of this particular application is drawn to:

Paragraph	1	Introduction	All
Paragraph	2	Licensing Objectives	All
Paragraph	3	Licensable Activities	All
Paragraph	4	Integration of Strategies and Other Legislation	All
Paragraph	5	Approach to Licensing Applications	All
Paragraph	6	Cumulative Effect	N/A
Paragraph	7	Representation, Reviews, and Appeals	7.2 – 7.8
Paragraph	8	Enforcement	N/A
Paragraph	9	Operating Schedules	9.3, 9.5, 9.11 – 9.17

### EQUALITY AND DIVERSITY

22. The council as a public body is subject to general and specific duties under equality and diversity legislation and as such has a duty to go beyond prohibition and publish and promote service improvements by engaging with the local community to assess the impact of any decision on the local community. As a requirement under the Equality Act 2010 and further improvements to diversity legislation all local authorities are required to impact assess their services, policies/strategies and decisions with regard to diversity legislation – race, disability, gender, age, sexual orientation and religion/belief. (NB: this list is not exhaustive, it does cover current legislation but future development could also include poverty and social inclusion as an example).
23. The equality impact assessment looks at how a service promotes equality and diversity to ensure legal compliance and that the services we provide and the decisions that we make meet the needs of our local community.
24. There is no requirement for an equality impact assessment to be carried out.

### OPTIONS

- Option 1: To retain the licence in its current form
- Option 2: To modify the conditions of the licence
- Option 3: To exclude a licensable activity from the scope of the licence
- Option 4: To remove the designated premises supervisor
- Option 5: To suspend the licence for a period not exceeding three months
- Option 6: To revoke the licence

## RISK MANAGEMENT

25. With regard to Option 1: To retain the existing permitted hours and licence conditions would allow licensable activities to continue in the current form, which may not ensure that the licensing objectives are upheld. This decision could be appealed by the applicant for the review.
26. With regard to Option 2: Modifying the conditions of the licence or the hours activities are permitted may ensure the licensing objectives are promoted providing the Committee are satisfied the modifications seek to address the causes of the concerns identified. This option may impact on the manner in which the licence holder conducts his business and may have financial implications for the licence holder and therefore may increase the risk of an appeal by the licence holder if this decision is not proportionate for the promotion of the licensing objectives. If the conditions do not adequately promote the licensing objectives, the applicant for review may appeal this decision.
27. With regard to Option 3: Members may wish to consider excluding a particular licensable activity from the licence, which may address any adverse impact on the licensing objectives. This course of action may have financial implications for the licence holder and therefore may be appealed by them. Members should be mindful of the cause of the concerns and whether this option will address these.
28. With regard to Option 4: Members may wish to remove the DPS to enable better management of the premises if they believe that this action would address the concerns that have been raised. This decision could be appealed by the holder of the licence if they do not believe this is appropriate or proportionate.
29. With regard to Options 5 and 6: The suspension or revocation of the licence would have an obvious impact on the livelihood of the licence holder. Members must be satisfied that such a decision is appropriate and proportionate for the promotion of the licensing objectives. This decision could be appealed by the licence holder if they do not believe it is proportionate or appropriate.

## EVALUATION

30. The national guidance issued under the Act suggests authorities seek to establish the cause of concerns raised and determine the most appropriate course of action to promote the licensing objectives.
31. Police have explained in their application for review that their cause for concern is the management at the premises and a potential lack of measures to control the noise from music emanating from the premises, the capacity and a potential lack of control of customers who may be drunk.
32. No comments have been received from any responsible authority or any other person suggesting that suspension or revocation of the licence is required or that removal of a licensable activity from the scope of the licence is necessary. The Committee should be aware that if they believe one of these options is appropriate and proportionate for the promotion of the licensing objectives, they may still choose one of these options.

33. If Members believe that no action is required to be taken and the licence should remain in its current form, they may choose this course of action. The Committee should be mindful that the national guidance states the Police should be the main source of advice in matters relating to the crime and disorder objective. Therefore, whilst the Committee must scrutinise the evidence provided by the Police they should give appropriate weight to the representations they have submitted as well as those submitted by other Responsible Authorities.
34. It should be noted that a review is not to determine guilt or innocence but it is for the Committee to determine whether there are concerns regarding these premises taking place on the premises and affecting the promotion of the licensing objectives.
35. The Police have suggested in their application that the Committee consider removing the DPS as they believe that the problems relate to the management of the premises. The Committee may wish to take this decision if they believe this is a cause for concern. The Licensing Authority have stated that they do not believe there is reason for this decision and that this will not address the concerns raised. The Licence Holder has confirmed they will be specifying the current manager, Mr Ian Whitehead, as the DPS in due course, although at the time of writing the report, this application had not been received.
36. It also been suggested by the Police that the Committee may wish to consider modifying the conditions by way of reducing the hours for activities, limiting the noise from entertainment and reducing the capacity permitted at the premises. Following the application for review, having met with the DPS to discuss measures Mrs Goldstone has implemented at the premises, the Police have subsequently indicated that they now do not believe this action will be necessary.
37. The Licensing Authority has stated that they do not believe there is evidence to support a reduction in the permitted hours or that it would address the concerns raised by the Police. The Licence Holder has also stated that they do not believe there is evidence to support such action being taken.
38. With regard to a noise limit being implemented at the premises as suggested by the Police in their application, Environmental Health have not requested this action to be taken as no complaints have been received other than from Police Officers. One representation has been received from a local resident who has supported the view that the noise from the premises is excessive.
39. Although it has not been suggested by any responsible authority, the Licence Holder has indicated that they are happy to install noise limiting equipment at the premises. The Committee must be satisfied that attaching a condition requiring this action to be taken is appropriate and proportionate for the promotion of the licensing objectives.
40. The Police have also suggested that the Committee consider attaching a condition to the licence restricting the capacity of the premises in order to prevent disorder and ensure staff can monitor and control the customers at the premises. The Fire Authority have indicated that they support a reduction in the capacity from the current licence condition stipulating 250 as a maximum.
41. Paragraph 2.13 of the national guidance states that a capacity lower than that stated on the Fire Risk Assessment can be stipulated as a licence condition to prevent disorder from customers becoming frustrated with overcrowding.

42. The Licence Holder is potentially willing to reduce the capacity. They are currently conducting an updated Fire Risk Assessment in order to confirm an appropriate capacity for the premises. Any relevant information arising from this, I believe will be made available to the Committee. If the Committee decide to attach a condition restricting the capacity, they must ensure it does not exceed the permitted numbers stated within the Fire Risk Assessment.
43. The Committee must have regard to all of the representations made and the evidence it hears.
44. Members should determine the application in accordance with section 52 of the Licensing Act 2003 and The Licensing Act (Hearings) Regulations 2005.
45. In making its decision, the Committee is also obliged to have regard to national guidance and the Council's own Statement of Licensing Policy.
46. Overall, the Committee is obliged to determine this application with a view to promoting the licensing objectives, which are:
  - The Prevention of Crime and Disorder
  - The Prevention of Public Nuisance
  - Public Safety
  - The Protection of Children from Harm

#### RECOMMENDATION

47. Members should determine the application in accordance with section 52 of the Licensing Act 2003 and The Licensing Act (Hearings) Regulations 2005.

#### APPENDICES ATTACHED

- [Appendix A](#) - Current Premises Licence for House of Legends, High Street, Newport
- [Appendix B](#) - Application for review of the Premises Licence submitted by Police
- [Appendix C](#) - Additional information provided by the Police
- [Appendix D](#) - Representations received from responsible authorities
- [Appendix E](#) - Representations received from other persons
- [Appendix F](#) - Representations received from Premises Licence Holder

## BACKGROUND PAPERS

- Isle of Wight Council Licensing Authority Statement of Licensing Policy 2011 – 2014:  
[http://www.iwight.com/living\\_here/environment/environmental\\_health/images/LI\\_CENSINGPOLICY2011-2014.pdf](http://www.iwight.com/living_here/environment/environmental_health/images/LI_CENSINGPOLICY2011-2014.pdf)

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